

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ESTHER L.,

Claimant,

vs.

ALTA CALIFORNIA REGIONAL
CENTER,

Service Agency.

OAH Case No. 2011050796

DECISION

This matter was heard before Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings, State of California, in Sacramento, California, on August 31, 2011.

Claimant represented herself. Claimant's sister assisted with interpretation of claimant's speech during the hearing.

Diane Williams, Supervising Counselor, represented the service agency, Alta California Regional Center (ACRC or regional center).

Oral and documentary evidence was received. At the conclusion of the hearing, the record remained open to allow parties to submit closing briefs. Briefs were received from both parties on September 16, 2011. The record was then closed and the matter was submitted for decision.

ISSUE

Should ACRC continue to fund claimant's Supportive Living Services Personal Care Assistants during work hours when she is employed?¹

¹ Claimant's request for fair hearing initially raised three issues and sought consolidation with a pending matter. One issue (whether her sister should be part of her paid support staff) was resolved in OAH Case No. 2011040548. At hearing,

FACTUAL FINDINGS

1. Claimant is an intelligent 28-year-old woman with cerebral palsy. In August 2005, claimant moved from Illinois to Davis, California, to attend the University of California, Davis (UCD) Law School. Claimant applied for regional center services.

2. On October 5, 2005, ACRC determined claimant was eligible for services based upon her diagnosis of moderate quadriplegic cerebral palsy. Due to her cerebral palsy, claimant cannot walk unaided; she uses a power wheelchair; has limited use of her arms and hands (can keyboard slowly); needs help for all transfers in and out of her wheelchair and for bathing, dressing and toileting; and her speech articulation is very poor. ACRC determined that claimant was eligible for supported living services, based on her need for uninterrupted personal care 24 hours a day, seven days a week, and her desire to live in the community.

3. Over the past years, claimant has received the services of personal care assistants through the Supported Living Services (SLS) component of her individual program plan (IPP) with ACRC. During this time, claimant attended and graduated from UCD Law School (2008). In December 2009, she successfully passed the California State Bar Examination, and she was admitted to the Illinois State Bar in May 2010. From graduation until August 2010, claimant was a volunteer attorney at a local legal services agency. From September through December 2010, claimant worked as an intern at the White House, Office of Public Engagement, in Washington, D.C.

4. Claimant is currently unemployed, but she is seeking employment as a public interest attorney. Claimant's predominant interest over the years has been to obtain a job working as a public interest or civil rights attorney. This desire was one of the reasons claimant chose to attend UCD Law School.

5. *Current IPP:* Claimant's current, annual IPP was prepared on February 7, 2011, by an IPP team comprised of ACRC service coordinator Julie Shulman, ACRC supervisor Mechelle Johnson, claimant and her sister. The IPP articulated claimant's three goals: to live independently with support; to find employment as an attorney; and to maintain her health.

In discussing claimant's objective to "find a job as an attorney," the IPP notes that claimant "is in the process of finding employment at a law office as an attorney. She is job searching independently and has established job development services with the Department of Rehabilitation. . . [Claimant] stated . . . that she is open to positions

claimant advised that a separate issue (whether ACRC should be prohibited from closing her case or terminating her services without her consent if she temporarily leaves California) is being addressed through a complaint process.

as an attorney in the State of California. . .” As previously indicated, the focus of claimant’s job search is on positions as a public interest or civil rights attorney.

An undated addendum to this IPP provides that claimant “will receive 730 hours of ACRC funded SLS services with On My Own [SLS agency] in order to live independently.” Pursuant to the Decision in OAH Case No. 2011040548 (see footnote 1), this addendum authorized the use of claimant’s sister as her SLS paid support staff.

6. On April 11, 2011, the IPP team engaged in a telephone conference, during which claimant asked whether she would receive SLS services when she finds employment. Claimant stated that she had been in several job interviews but did not want to accept a job without knowing that she would have SLS support. The matter was left unresolved while Ms. Johnson investigated.

This conversation continued on April 22, 2011, when a representative from Department of Rehabilitation (DOR) was present with the IPP team. ACRC advised claimant that it was not cost effective for it to provide her with personal care once she is employed. The DOR representative noted that DOR would only provide limited support for a limited time. Ultimately, DOR denied claimant’s request for personal care staffing during work hours.²

7. On April 29, 2011, ACRC issued a Notice of Proposed Action (NOPA) advising claimant that it was denying her request to fund SLS during work hours while employed. As reason for its proposed action, ACRC stated that “it is not cost effective for ACRC to provide support for activities of daily living (ADL) during work hours and that your employer would be responsible for providing reasonable accommodations while on the job.” The following statutes and policies were cited in support of the NOPA: Welfare and Institutions Code sections 4646, subdivision (a); 4646.4, subdivision (a)(1),(2) and (3); 4647, subdivision (a), 4659, subdivision (a)(1) and (2); ACRC Service Policy Manual (General Standards for the Purchase of Services and Supports); and the Americans with Disabilities Act (ADA) of 1990, Title 1, sections 12111(9) and 12112.³

² In its August 16, 2010 Decision, DOR explained that its services are time limited (90 days), and that “DOR’s regulations only allow for the provision of Personal Assistance Services, Interpreters, and Attendants...as required, if the individual is receiving vocational rehabilitation services. Your request to receive this service permanently from DOR for employment is not supportable.”

³ Unless otherwise indicated, all undesignated statutory references are to the Welfare and Institutions Code.

8. Claimant timely filed a Fair Hearing Request appealing the regional center's decision on the basis described in the NOPA. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, on June 28, 2011. On June 27, 2011, at claimant's request, the hearing was continued to August 31, 2011, when the matter convened and concluded.

9. *ACRC's Contentions:* ACRC denied claimant's request for the reasons expressed in the NOPA described in Factual Finding 7. At hearing, ACRC changed its position. ACRC asserted it was willing to support claimant's goal to obtain employment, but argued it was premature to determine whether SLS services would be provided because claimant has not yet obtained a job offer or a job.

ACRC expressed its willingness to consider necessary supports for claimant after she obtains a job with a specific employer. At that time, claimant's IPP team could evaluate the work environment of the specific job, look at natural and generic resources available to claimant within that environment, and then determine what services ACRC can commit to provide. This position was reflected in the testimony of Ms. Shulman and Ms. Johnson, who noted that this was a requirement of section 4646.4, which requires ACRC to follow its internal process for purchase of services.

10. *Claimant's Contentions:* Claimant asserted that, procedurally, ACRC waived its right to argue that her case is not ripe for adjudication by failing to include this reason in the NOPA. Claimant asserted that she has been actively seeking employment as a public interest attorney and has "good leads and opportunities for this fall." Because this basis was not articulated in the NOPA, claimant was not adequately prepared to address this issue. Claimant argued that she needs to know whether ACRC will provide her with personal care assistants so she can assure a prospective employer that she can work.

Substantively, claimant argued that ACRC's position conflicts with the policy of the Lanterman Act (Act), section 4500 et seq., with the goals and objectives of her IPP, and with ACRC's past history of providing SLS personal care assistant services to her while she attended law school and studied for the State Bar examination. Claimant further argued that personal care assistant services are not a "reasonable accommodation" which an employer would be required to provide under the ADA. Further, if such an accommodation were to be required, small public interest and civil rights firms would likely qualify for the "undue hardship" exemption. Claimant asserts that it is not cost-effective for ACRC to deny her request.

Ripeness

11. Section 4710.5, subdivision (a), of the Act provides that any recipient of services “who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient’s . . . best interests, shall, upon filing a request within 30 days after notification of the decision or action complained of, be afforded an opportunity for a fair hearing.”

ACRC’s assertion that claimant’s fair hearing request is premature – i.e., not ripe for adjudication – is not persuasive for several reasons. First, ACRC’s changed position placed claimant at a disadvantage at hearing and deprived her of a full opportunity to obtain witnesses and/or documents to address this issue. ACRC did not raise this as a basis for denying claimant’s request for SLS services during employment in its NOPA and it thus waived this issue. Second, contrary to ACRC’s argument, resolution of the issue claimant has raised is in no way purely speculative or advisory.

As explained by the Supreme Court in *Pacific Legal Foundation v. California Coastal Commission* (1982) 33 Cal.3d 158, 170-171, “the ripeness requirement, a branch of the doctrine of justiciability, prevents courts from issuing purely advisory opinions. . . It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion.” The Court stated that “the controversy ‘must be definite and concrete, touching the legal relations of parties having adverse legal interests. . . It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical set of facts.’” (*Ibid*, quoting *Aetna Life Ins. Co. v. Haworth* (1937) 300 U.S. 227, 240-241; internal citations omitted.)

As described more fully below, claimant has worked to become a licensed attorney with the goal of obtaining employment as a public interest lawyer for many years. She has done so with ACRC’s knowledge and assistance. These preconditions to her employment as an attorney have now been satisfied. Claimant’s next hurdle is to obtain a job offer. In light of claimant’s established need for 24-hour personal care services regardless of the setting (i.e., working vs. not working), it is not speculative to determine whether the ACRC may appropriately cease providing such services if claimant were to accept an offer of employment. Further, claimant’s prospects for accepting an offer of employment will be directly and concretely enhanced or diminished depending upon her continued receipt of the services of personal care assistants. A denial of continued services after receipt of a job offer, with its likely request for fair hearing to challenge this denial, will engender protracted delay and the likely loss of any pending job opportunity. Such a process would effectively preclude claimant from receiving a hearing on the merits, denying her due process.

Personal Care Assistants

12. The regulations define “Supported Living Service(s) (SLS)” as those services and supports referenced in section 54349, subdivisions (a) through (e), and specified as SLS service and support components in California Code of Regulations, title 17, Section 58614, which are provided by a SLS vendor, paid for by the regional center, and support consumers’ efforts to: “(A) Live in their own homes, as defined in Title 17, Section 58601(a)(3); (B) Participate in community activities to the extent appropriate to each consumer’s interests and capacity; and (C) Realize their individualized potential to live lives that are integrated, productive, and normal. . .” (Cal. Code Regs., tit. 17 (CCR), § 54302, subd. (71).) SLS are vendorized services that a regional center shall authorize “only if such service: (1) Is cost-effective; and (2) Can not feasibly be provided without cost, or at a lesser cost, through generic or natural supports available in the community.” (CCR, § 54349, subd. (g).)

13. It is undisputed that ACRC will continue providing claimant with 24-hour-a-day SLS personal care assistant services if she stays at home and does not work.

14. Between September 2007 and August 2010, and currently, claimant has received SLS services through Summer House, Inc.⁴ As indicated in the August 24, 2011 letter from Summer House’s Executive Director Erin Plank-Ryan, Summer House staff has supported claimant’s goal to finish law school. In this context, “staff provided support during classes, studying, and in law school clinic work. while studying for her Bar exam and during the exam itself.” Thereafter, Summer House, Inc. “supported [claimant] in searching for employment, which included supporting her with part time and volunteer opportunities.”

Ms. Plank-Ryan provided a general job description for the position of Personal Attendant with Summer House, and wrote that:

A substantial portion of [claimant’s] current personal care services will be similar, if not exactly the same, to the assistance she will require during employment. These tasks include: translating her speech during in person meetings or over the phone, transporting her to meetings, reading out loud long documents to her, assisting [claimant] with mail sorting, organizing her desk and papers, typing dictation, using her scanner and printer, and grooming which includes

⁴ Sometime in late 2010, claimant’s SLS services were changed to On My Own SLS agency. These services were determined to be inadequate, however, and were terminated effective August 2, 2011. Summer House SLS resumed as claimant’s current SLS agency.

brushing her teeth after each meal, using the bathroom, and eating meals or snacks and drinking liquids.

15. Claimant's personal care needs were specifically described in the declarations under penalty of perjury submitted by Ashley Brazil, Brooke Babineau, Bethany Drouillard, Veronica Elena Lopez, and Jamie Trinkle. Each of these individuals previously worked with claimant as a personal care assistant. The nature of the personal care provided to claimant by these assistants was generally consistent with that described above.

Ms. Drouillard, who also testified, noted that the SLS vendors provide personal care assistants with training necessary to properly assist claimant and to avoid incurring injury to themselves (i.e., during lifting activities). Further, as part of the SLS process, claimant has a significant say in which assistants are a good match for her needs. Based upon Ms. Drouillard's experience as an SLS aide, she opined that a private employer would not have the expertise to properly hire and train personal care assistants to appropriately care for claimant.

16. Claimant also provided a list of "On the Job Assistance" she needs. Description of these tasks was further supplemented by information provided by UCD's career counselors Kirsten Hill, Lisa Carlock and Kim Thomas (UCD counselors), and the testimony of UCD Professor Carter C. White. Claimant's personal care services include:

a. *Assisting claimant with all her personal needs, including cooking, meal preparation, eating, bathing, dressing, toileting:* Claimant noted that it would be "awkward" to ask her employer to provide toileting assistance. Further, due to her acid reflux, which is increased in stressful situations like working, she has frequent toileting needs. Regarding eating, claimant explained that she needs to eat small meals and snacks frequently to mitigate the acid. While eating, claimant makes sounds that may be confused with choking. Trained personal care assistants can assist her, but it would be inappropriate to expect a co-worker to know how to respond to claimant's feeding issues.

b. *Translating/effectively communicating:* Claimant's speech is very difficult to understand without an interpreter or assistant. Her personal care aides have helped her to effectively communicate at home, by telephone, in the community, at law school, and at job interviews. UCD counselors wrote that, based upon their experience working with claimant during law school, both with and without an interpreter, "it is our opinion that having an interpreter assistant would greatly enhance her employment prospects." Ms. Drouillard noted that it can be time consuming for new assistants to become familiar enough with claimant's speech to effectively translate for her. Professor White noted that most people have difficulty understanding claimant's speech at least initially. While he eventually was able to better understand claimant's

speech, many faculty members had difficulty understanding claimant even after working with her for substantial periods of time. Claimant notes that, although she has speech output on her laptop, it is hard for her to use it to communicate because she is a slow typist.

c. *Reading:* Claimant explained that, if reading materials are not available electronically, she needs these materials read out loud to her.

d. *Typing:* Claimant dictates her documents and then needs to have them transcribed by someone familiar with her speech.

e. *Performing common office tasks:* UCD counselors further observed that claimant has great difficulty handling common office tasks without assistance. They opined that having an interpreter/assistant “to help her with office tasks such as making copies, using a fax machine, and making phone calls would further help her employment prospects.”

17. Carter C. White is on the faculty at UC Davis Law School where he is the supervising attorney for the King Hall Civil Rights Clinic (Clinic). Professor White provided a declaration under penalty of perjury in support of claimant’s request for SLS services while employed and testified. His testimony is paraphrased as relevant below.

Claimant was enrolled in the Clinic and worked under Professor White’s supervision for two semesters during the 2007 – 2008 school year. During her time at the Clinic, claimant brought her personal assistants to the clinic and they would help her as needed in completing tasks for the Clinic. These tasks included typing dictation; reading written materials out loud; translating claimant’s speech over the telephone, to faculty and during oral argument; helping claimant adjust her laptop; caring for claimant’s personal care needs; and helping her groom and dress appropriately for court. Professor White expressed his opinion that once claimant is employed in her chosen field, she will require the same type of help from her personal care assistants as she did in the Clinic.

Based on his experience as a public interest attorney, Professor White noted that most of these firms are small (under 15 employees), do not provide individual secretaries, and most attorneys are expected to perform their own administrative tasks. During work hours, claimant will need personal care. Most small public interest firms are not in the business of providing personal care to their staff and are unable to pay for such services. If claimant’s employer were required to provide her with an assistant, Professor White believes this “will restrict her job search greatly as well as an employer’s ability to hire her.” Further, based upon his experience with claimant at the Clinic, Professor White determined it was inappropriate to ask co-workers to help claimant in areas such as personal grooming and toileting.

Americans with Disabilities Act (ADA)

18. The ADA broadly prohibits discrimination based on disability, and provides that “[n]o covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” (42 U.S.C. § 12112, subd. (a).) The term “discriminate against a qualified individual on the basis of disability,” encompasses a variety of acts, including:

(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant. . . (42 U.S.C. § 12112, subd. (b)(5)(A) and (B).)

19. A “covered entity” includes “an employer,” further defined as “a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person. . .” (42 U.S.C. § 12111, subds. (2) and (5).)

20. “Reasonable accommodations” is defined as follows:

The term “reasonable accommodation” may include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

21. The ADA's standards for employment discrimination, including the concepts of reasonable accommodation and undue hardship, apply to state colleges and universities. (29 U.S.C. § 794, subds. (b)(2)(A) and (d).) As indicated in the testimony of both claimant and Professor White, UCD provided some assistance to claimant during her studies through its Student Disability Office (e.g., note takers, text conversion, extended time on examinations), but it did not pay for claimant's personal care assistants.

22. The ADA's definition of reasonable accommodations does not extend to personal care assistants of the type required by claimant. The statutory definition does not encompass the intensely personal and intimate services performed by claimant's assistants. These services allow claimant to function in the world as a normal productive citizen, able to communicate and use her intellect and legal training to maximize her ability to live a normal, integrated life that includes employment consistent with her potential.

23. Further, the Equal Employment Opportunity Commission (EEOC) has issued publications explaining why personal care is not a reasonable accommodation. In its publication "*Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act*," No. 915.002, (October 2002), http://www.eeoc.gov/policy/docs/accommodation.html#N_28, it explains that:

There are several modifications or adjustments that are not considered forms of reasonable accommodation. . . . An employer does not have to provide as reasonable accommodations personal use items needed in accomplishing daily activities both on and off the job. Thus, an employer is not required to provide an employee with a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices if they are also needed off the job. Furthermore, an employer is not required to provide personal use amenities, such as a hot pot or refrigerator, if those items are not provided to employees without disabilities. However, items that might otherwise be considered personal may be required as reasonable accommodations where they are specifically designed or required to meet job-related rather than personal needs.

24. Even assuming that claimant were to be hired by a "covered entity" with 15 or more employees, the services provided to her by her personal care assistants are not within the scope of services for which reasonable accommodation may be required. These are personal services that claimant requires both on and off the job, and must be provided by trained individuals who are well-matched with claimant. There was no persuasive evidence that these services could safely and appropriately be provided by a co-worker or volunteer at work, who might be considered a "natural" or a "generic" resource.

25. ACRC shall continue to provide personal care assistants to claimant during work hours when she is employed.

LEGAL CONCLUSIONS

1. The Lanterman Act expresses a strong public policy for respecting the choices of eligible consumers and for providing services that maximize consumers' ability to live normal integrated lives. Section 4501, in pertinent part, provides:

Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. Consumers of services and supports . . . should be empowered to make choices in all life areas. These include promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities, including supported living and other appropriate community living arrangements. In providing these services, consumers . . . should participate in decisions affecting their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way in which they spend their time, including education, employment, and leisure, the pursuit of their own personal future, and program planning and implementation. . . (see also, § 4502.1.)

2. Section 4502 enumerates the rights of persons with developmental disabilities. These include the right to receive services and supports which "foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible. . ." and the right to "make choices in their own lives, including, but not limited to, . . . the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation." (§ 4502, subds. (a), (j).) In securing services and supports for consumers, the Legislature has expressly indicated its intent that regional centers do so in a manner "which maximize opportunities and choices for living, working, learning, and recreating in the community." (§ 4640.7, subd. (a).)

3. This policy is further underscored in the definition of 'services and supports for persons with developmental disabilities' as "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, *or toward the achievement and maintenance of independent, productive,*

normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process.” (Italics supplied.) (§ 4512, subd. (b); see also § 4648, subd. (a)(1), reflecting “the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The . . . planning team shall give highest preference to those services and supports which would allow. . . adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.”)

Enumerated “services and supports listed in the individual program plan may include, but are not limited to, . . . personal care, . . . supported and sheltered employment, . . . community integration services, . . . habilitation, . . . [and] supported living arrangements. . .” (§ 4512, subd. (b).) In determining which services and supports are necessary for a consumer, the IPP team must consider “a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost effectiveness of each option.” (§ 4512, subd. (b).)

4. The Act requires the cost effective use of public resources. The IPP process, described in section 4646, reflects the Legislature’s intent to promote “community integration, independent, productive, and normal lives, and stable and healthy environments” for consumers. It also requires the IPP team “to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.” (§ 4646, subd. (a).)

In implementing IPPs, regional centers, through the planning team, “shall first consider services and supports in natural community, home, work, and recreational settings.” (§ 4648, subd. (a)(2).) Regional center funds “shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.” (§ 4648, subd. (a)(8).) Among other service and support options, “planning teams shall consider the use of . . . personal assistance, technical and financial assistance, and all other service and support options which would result in greater self-sufficiency for the consumer and cost-effectiveness to the state.” (§ 4648, subd. (a)(11).)

5. Section 4646.4, subdivision (a), provides in pertinent part that regional centers “shall ensure . . . the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

- (1) Conformance with the regional center's purchase of service policies, as approved by the department. . .
- (2) Utilization of generic services and supports when appropriate.
- (3) Utilization of other services and sources of funding as contained in Section 4659.

Section 4659, subdivision (a), provides that the regional center "shall identify and pursue all possible sources of funding for consumers receiving regional center services." These sources include, but are not limited to, both of the following:

- (1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.
- (2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

ACRC's Service Policy Manual indicates that ACRC shall provide assistance to adult consumers in assessing and arranging for suitable living options that: support an independent and productive lifestyle within their community; maximize community opportunities and minimize isolation; and minimize risks for health and safety of the consumer. Various factors are considered for consumers currently receiving SLS services. These include: the availability of family support and other natural supports; the availability of generic resources, including In-Home Supportive Services; identification of frequency, duration and intensity of supports necessary to meet the needs and choices of the consumer; and cost effectiveness in the selection of living options, housing arrangements... and service providers."

6. As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly in Factual Findings 12 through 25, claimant's personal care services are of a personal nature that must occur over the course of each day, regardless of whether or not she is employed. These services, many of which are of an intensely personal nature, are not encompassed within the definition of reasonable accommodations under the ADA.

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ORDER

Claimant's appeal is granted. ACRC shall continue to provide personal care assistants to claimant during work hours when she is employed.

DATED: October 3, 2011

MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd.(a).)